

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LOUISE BOSTON, Administratrix of the
Estate of MAE EVELYN BOSTON, Deceased,
Plaintiff

V.

NO. 3:93CV106-B-A

VERALIE THEOBALD, Individually and
In Her Official Capacity as Deputy
Chancery Clerk of Lafayette County,
Mississippi; LAFAYETTE COUNTY,
MISSISSIPPI; F. D. "BUDDY" EAST,
Individually and In His Official
Capacity as Jailer of Lafayette County,
Mississippi and BILL PLUNK, Individually
and In His Official Capacity as Chancery
Clerk of Lafayette County, Mississippi,
Defendants

MEMORANDUM OPINION

This cause is presently before the court on the defendants' motion to dismiss and for sanctions. Because the court will grant the motion in its entirety, it accepts as true all the factual allegations set forth in the plaintiff's complaint. The facts of this cause are substantially the same as those set out in the court's previous memorandum opinions issued on July 30, 1990 and August 21, 1990. Boston v. Lafayette County, Miss., 743 F. Supp. 462 (N.D. Miss. 1990) (Boston I); Boston v. Lafayette County, Miss., 744 F. Supp. 746 (N.D. Miss. 1990) (Boston II), aff'd without op., 933 F.2d 1003 (5th Cir. 1991). The court finds it unnecessary to recite the facts for the third time and, therefore, incorporates by reference the findings of fact in those rulings.

I. PRIOR ADJUDICATIONS

In Boston I, the court granted summary judgment in favor of the defendants on this plaintiff's federal claims against the county and individual defendants sued in their official capacity. Boston I, 743 F. Supp. at 475. In rejecting the plaintiff's contention that a federally protected right was created under state law requiring a complete medical and psychiatric examination within twenty-four hours of commitment, the court explained that "state law does not determine the scope of the Due Process Clause." Id. at 472. The court further held that the "medical care customarily provided by the county for mentally ill detainees does not fall below constitutional standards." Id. at 474. The plaintiff's pendent state claims against the county were dismissed without prejudice.

Claims against the individual defendants in their individual capacities remained pending. The court resolved those issues in Boston II. On cross-motions for summary judgment the court ruled again that there was no constitutional deprivation of due process because of a failure to receive a full medical examination within twenty-four hours as required by state law. Boston II, 744 F. Supp. at 755. The court further held that Special Master Davis and Chancery Clerk Plunk were entitled to absolute immunity for the exercise of their respective judicial functions and were not liable for any constitutional deprivation that they may have wrought upon Boston. Id. at 750-51. Additionally, the court held that Sheriff

East and the jailers (Miller, Carpenter, and Thomas) were entitled to qualified good faith immunity. The court dismissed the pendent state claims against the individual defendants without prejudice. Theobald, against whom the only federal claim is alleged, was not named in the previous action.

II. DISCUSSION

The defendants contend that the plaintiff's only federal claim is barred by the principles of res judicata and collateral estoppel. Furthermore, they assert that Theobald is entitled to absolute immunity for the performance of her official duties as the deputy chancery clerk of Lafayette County, Mississippi. The court agrees.

A. RES JUDICATA AND COLLATERAL ESTOPPEL

The doctrines of res judicata and collateral estoppel deal with the question of whether the adjudication of certain matters is precluded by a prior adjudication. See Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 n.6, 72 L. Ed. 2d 262, 270 n.6 (1982). Under the doctrine of res judicata, parties and their privies are precluded from relitigating claims that were or should have been raised in a prior action and have reached a final judgment on the merits. Metro Charities, Inc. v. Moore, 748 F. Supp. 1156, 1159 (S.D. Miss. 1990); Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398, 69 L. Ed. 2d 103 (1981); see also Commissioner v. Sunnen, 333 U.S. 591, 597, 92 L. Ed. 2d 898 (1948) (noting parties are also

bound on matters that could have been raised); Cromwell v. Sac County, 94 U.S. 351, 352-53, 24 L. Ed. 195 (1876) (same).

Collateral estoppel is a derivative of res judicata with a more narrow focus. While res judicata encompasses questions which might have been litigated, collateral estoppel applies only to questions actually litigated in a prior suit. Metro Charities, 748 F. Supp. at 1160. Once a court has decided an issue essential to its judgment, collateral estoppel precludes the issue from being relitigated in another suit on a different cause of action involving a party to the first cause. Metro Charities, 748 F. Supp. at 1159. The doctrine has the effect of establishing conclusively questions of law or fact that have received a final judgment for the purposes of a later suit. In addition to protecting litigants from the burden of relitigation, collateral estoppel serves the purpose of promoting judicial economy. State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Ins. Co., 601 F. Supp. 286, 288 (S.D. Miss. 1984).

Federal law determines the preclusive effect of a prior federal court judgment. Recovery L.P. v. Pentecost, 44 F.3d 1284, 1290 (5th Cir. 1995); Russell v. SunAmerica Sec. Inc., 962 F.2d 1169, 1172 (5th Cir. 1992). Under federal standards, there are four necessary criteria that must be met for collateral estoppel to apply:

- (1) the issue under consideration is identical to the one involved in the prior litigation;

(2) the issue was fully and vigorously litigated in the prior action;¹

(3) the issue was necessary to support the judgment in the prior case; and

(4) there is no special circumstance that would make it unfair to apply the doctrine.

Copeland v. Merrill Lynch & Co., No. 94-30179, ___F.3d___, 1995 WL 96258, at *4 (5th Cir. Mar. 9, 1995); United States v Shanbaum, 10 F.3d 305, 311 (5th Cir. 1994).

1. Identity of the issues

The issues raised and decided in Boston I and Boston II are conclusive for purposes of any subsequent attempt to relitigate the same. If the plaintiff is attempting to relitigate issues already adjudicated, her action should be dismissed. Therefore, the court must determine the issue before the court in Boston I and Boston II. Simply stated, that issue was whether the defendants "deprived Boston of her substantive and procedural due process rights" by failing "to provide adequate medical care to Boston as required by state law." Boston II, 744 F. Supp. at 749; see also Boston I, 743 F. Supp. at 472 ("the essence of her allegation is that Boston lost her life due to the county's failure to provide adequate medical

¹ The court finds no material distinction between the language used herein to define the second factor and the more common "actually litigated" language of other definitions. See Recoverage L.P., 44 F.3d at 1290 (decided on Feb. 17, 1995). The court adopts the language used by the most recent Fifth Circuit opinion. Copeland, 1995 WL 96258, at *4 (decided on Mar. 9, 1995).

care").

The court came to the conclusion that substantive due process under the Constitution was not determined by state law. Boston I, 743 F. Supp. at 472. In so doing, the court found that the county did not deny Boston of her substantive or procedural due process rights. Id. at 475. Furthermore, in Boston II, the court, in deciding the claims against the individual defendants, held that "Boston was not deprived of procedural due process because she failed to receive a full medical examination within twenty-four hours as required by state law." Boston II, 744 F. Supp. at 754-55. Thus, the court concluded that Boston had no federally protected right to a complete mental and physical exam within the prescribed period.

Turning to the plaintiff's latest complaint, the court finds the only difference to be the named party. The plaintiff now alleges that Theobald "deprived Boston of her federally protected right to a complete medical and psychiatric examination within 24 hours of the entry of the court order . . . [and] pursuant to Miss Code Ann. Section 41-21-69(2) (cum. supp. 1992)." ² Comp. at 6. The plaintiff claims that the order constituted a sufficient interest protected by substantive due process. Id. Again, the plaintiff is essentially asking the court to predicate a

²Although the plaintiff cites to the 1992 amendment, the version of the statute in effect at Boston's death had no material differences.

constitutional due process violation on the violation of a state statute and/or chancery court order. The court refused to do so in the previous action.

Thus, the issue now raised is identical to the issue raised in Boston I and Boston II. Because the very issue the plaintiff would have the court decide upon has already been raised in the prior litigation, the first prong of the collateral estoppel defense has been met.

2. Fully and Vigorously Litigated

In order for an issue to have been fully and vigorously litigated, for purposes of the doctrine, the issue must be raised, submitted for determination, and determined. There is no question that the prior litigation addressed the issue of whether constitutional due process was violated based on the alleged departure from state law or court order. The court previously addressed and decided this issue in granting summary judgment for the defendants. The Fifth Circuit, without comment, affirmed the entire opinion. The plaintiff also had every incentive to vigorously litigate this issue previously. Thus, there is no question that the plaintiff has had a full and fair opportunity to present her arguments in a previous action. The issue having been decided adversely to her, she should not be allowed a further airing of this claim.

3. Necessary

There can be no dispute that the determination reached by the court concerning the due process issue was clearly necessary to its judgment.

4. No Special Circumstance Rendering Application Unfair

Finally, the court is unaware of any special circumstances which would render collateral estoppel inappropriate. The plaintiff does point out that her state law claims are now barred by the statute of limitations. However, the loss of the state right of action has no bearing on the court's determination of the propriety of the federal claim.

Accordingly, the court finds that the plaintiff is collaterally estopped from relitigating the due process issue.

B. ABSOLUTE JUDICIAL IMMUNITY

As an alternative position, the defendants contend that Theobald was performing a judicial function at the direction of a judge in scheduling the examination and therefore is entitled to quasi-judicial immunity. Interestingly enough, both the plaintiff and the defendants claim that Theobald's duties were performed in a ministerial capacity. The plaintiff, however, contends that this fact alone disposes of the issue because only discretionary functions are entitled to absolute immunity. See Westfall v. Erwin, 484 U.S. 292, 300, 98 L. Ed. 2d 619, 628 (1988) ("absolute immunity does not shield official functions from state-law tort liability unless the challenged conduct is within the outer

perimeter of an official's duties and is discretionary in nature"); Imbler v. Pachtman, 424 U.S. 409, 423 n.20, 47 L. Ed. 2d 128, 139 n.20 (1976) (noting quasi-judicial immunity extends to individuals exercising discretionary judgment); Williams v. Wood, 612 F.2d 982, 984 (5th Cir. 1980) ("[a] clerk of federal court performing routine duties such as entering an order and notifying parties does not enjoy absolute immunity").

The plaintiff's reliance on this line of cases is misplaced. In addition to the protection generally afforded clerks performing discretionary functions, the Fifth Circuit has also clothed clerks with absolute immunity when they perform ministerial functions at the direction of a judge or under court decree. Williams, 612 F.2d at 985. The Williams court explained:

A clerk may receive immunity in his own right for the performance of a discretionary act or he may be covered by the immunity afforded the judge because he is performing a ministerial function at the direction of a judge.

Id. This has come to be known as quasi-judicial immunity. Its application by the Fifth Circuit has been limited to a narrow range of circumstances, in the nondiscretionary context, where the clerk is acting "in a nonroutine manner under command of court decrees or under explicit instructions of a judge." Id.; see also Boston II, 744 F. Supp. at 750 ("[j]udicial immunity extends to those officials whose acts are functionally equivalent to [those] of a judge . . . and quasi-judicial immunity shields lower officials,

such as clerks, who implement judicial orders"); Johnson v. Craft, 673 F. Supp. 191, 193 (S.D. Miss. 1987) (noting court clerks are immune from liability when performing official acts); Hanner v. United States, 660 F. Supp. 77, 78 (S.D. Miss. 1986) ("quasi-judicial immunity is extended to those servants and agents who facilitate the judicial process").

The operative question then becomes not whether the act is discretionary or ministerial, but whether the act is judicial in nature. Foster v. Walsh, 864 F.2d 416, 417 (6th Cir. 1988); Sindram v. Suda, 986 F.2d 1459, 1461 (D.C. Cir. 1993). An act is judicial in nature if it is normally performed by a judicial officer and not in clear absence of all jurisdiction. Id. Since both parties agree that the act performed by Theobald was purely ministerial, the only question for the court is whether the performance of such act fits into the narrow range of actions which clothe clerks of court with absolute immunity when not performing discretionary functions. The court finds that it does.

There is no question that Theobald was acting under explicit instructions of a judge. Sections 41-21-67 and 41-21-69 of the Mississippi Code Annotated authorize the chancellor or special master in chancery to direct the chancery clerk to issue a writ to take custody and to schedule a mental and physical exam.³ Special

³ Miss. Code Ann. § 41-21-67 (1993) (amended 1994) stated, in pertinent part: the clerk, upon direction of the chancellor of said court, shall issue a writ directed to the sheriff of the

Master Davis ordered the chancery clerk to take Boston into custody and further ordered a complete physical and psychiatric examination within 24 hours. The court held in Boston II that Chancery Clerk Plunk was performing a judicial function for which he was entitled quasi-judicial immunity in issuing the writ to take custody. Boston II, 744 F. Supp. at 751. It would therefore follow that Deputy Chancery Clerk Theobald is also entitled to quasi-judicial immunity for performing her judicial function in scheduling the examination as instructed by Davis. Theobald acted pursuant to her official position when she performed her duties under the above-referenced statutes and under direction of the chancellor. Clearly then, the scheduling of the exam was a judicial function performed in accordance with explicit instructions. The mere error in carrying out those instructions is of no consequence. See Foster, 864 F.2d at 417 (mere error made in issuance of arrest warrant per court instruction immaterial to application of quasi-judicial immunity). Thus, the scheduling of the examination, even though non-discretionary, was a judicial act entitling Theobald to absolute immunity from liability.

proper county to take into his custody the person alleged to be in need of treatment and to bring such person before said clerk or chancellor for examination as set forth in Section 41-21-69.

Miss. Code Ann. § 41-21-69 (1993) (amended 1994) stated, in pertinent part: Such examination shall be conducted and concluded within twenty-four (24) hours after the order for examination and appointment of attorney, and the certificate of the physicians and any psychologist shall be filed with the clerk of the court within said time

C. STATE LAW CLAIMS

The court finds that there are no remaining federal claims to be adjudicated and therefore dismisses the pendent state claims. United Mine Workers v. Gibbs, 383 U.S. 715, 16 L. Ed. 2d 218 (1966). The court is aware that this disposition will leave the plaintiff without remedy in state court due to the elapse of the statute of limitations. However, the plaintiff filed this action on July 6, 1993 -- six days before the six-year statute of limitations would bar her claim. In so doing, the plaintiff accepted the fact that her action may fail and the court may, as it has twice in the past, dismiss her state claims. The court should not be pressured into retaining jurisdiction because the plaintiff declined to bring a state court action in the six-year period following Boston's unfortunate death. Furthermore, the court finds that the plaintiff's federal claim is wholly without merit and indeed is frivolous and vexatious. For these reasons the court declines to retain jurisdiction.

D. SANCTIONS

The court finds that the defendants' motion for sanctions is well taken. The plaintiff's claim is in clear opposition to firmly established law on the preclusive effects of prior judgments and on absolute immunity. Evidence of this can be seen in the plaintiff's claim against Theobald in her official capacity. Such a claim has long been held to be an action against the government entity

employing the defendant official. Thus, the plaintiff has asserted the same claim against the same party as in the previous litigation. Furthermore, Boston's claim of a right to a medical exam within twenty-four hours as required by state law was previously held not to give rise to a constitutional violation. The plaintiff has not proffered any good faith argument why the cause presently before the court is any different except in name. Therefore, the plaintiff's argument is objectively unreasonable and frivolous. See Hanner, 660 F. Supp. at 78 (holding plaintiff's claim against court clerk frivolous based on finding of immunity).

The plaintiff contends that sanctions would be inappropriate because of the defendants' failure to properly notify the plaintiff of their desire to seek sanctions and incurred unnecessary defense expenses. The court finds both arguments unpersuasive. Because the motion was filed and fully briefed before the adoption of the new Rule 11 standards, proper notice could be in the form of "a timely Rule 11 motion." Thomas v. Capital Security Services, Inc., 836 F.2d 866, 880 (5th Cir. 1988). Furthermore, there is no evidence of any unnecessary expenditures incurred by the defendants. Indeed, all that the defendants have done is answer the plaintiff's complaint and immediately move to dismiss.

The defendants will be allowed thirty days to submit an itemization of the costs and fees incurred in defending this action.

III. CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss and for sanctions will be granted. An order in accordance with this memorandum opinion will issue.

THIS, the _____ day of April, 1995.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE